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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,600	03/06/2001	Italo Corzani	CM2011/MH	1483

7590

09/03/2003

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EXAMINER

SINGH, ARTI R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/03/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,600

Applicant(s)

CORZANI ET AL.

Examiner

Ms. Arti Singh

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on response filed on 06/10/2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

Art Unit: 1771

DETAILED ACTION***Response to Amendment/Arguments***

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed on 06/10/2003. The amendments to the specification overcomes the objections made in paragraphs 1 & 2 of the previous office action. Amendment to claims 1, 4 and 5; cancellation of claims 2-3 have all been entered, and the pending claims at this time are claims 1 and 4-7. The amendment to the claims overcomes the rejection made under 35 USC 112-2 in paragraphs 4 & 5 of the previous office action. The rejections made under paragraphs 7-10 are also withdrawn, as Applicant has amended the claims to comprise a fluoroacrylate and no longer a fluorocarbon. Applicant's arguments with respect to claims 1 and 4-7 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,391,426 issued to Wu. The invention of Wu is geared towards protective covering materials that protect persons inside a garment, tent, sleeping bag or the like, while having a high water vapor transmission rate. More specifically. This invention is directed to water vapor permeable coated materials and coverings made from them which protect persons or contents from noxious gases, and other chemical agents (column 1, lines 14-22). The protective covering of this invention is a composite that may comprise a pliable substrate that is permeable to water vapor and is preferably resistant to penetration by liquid water, a gas blocking water vapor permeable polymeric coating and additionally may be combined with a facing and/or backing fabric to provide protection to the composite (column 1, lines 45-63). The pliable substrate can be any water vapor permeable material such as a woven or nonwoven textile, or a knit fabric, a polymeric film or membrane

Art Unit: 1771

(column 2, lines 16-20). The coating or a film on the surface of the substrate, which is a nonporous, air-impermeable layer on the substrate. It can also partially or fully impregnate the pores of the substrate when the substrate is porous. It also can be sandwiched as a continuous coating between two layers of substrate. The composite is useful to combine with backing fabrics and/or facing fabrics to result in a material useful in making articles of clothing or other protective coverings. These backing or facing fabrics can be any protective material such as woven or nonwoven textiles, or knits. These fabrics can be treated with water and oil repellants or with the gas-blocking polymer, or with both. Fluoroacrylate water repellants are one preferred class of coating on the fabric. Representative fluoroacrylates are available from companies such as the Du Pont Company-Zonyl® or ICI Co.-Milease® compositions (column 2, line 66 to column 3, line 25). The coating can be applied to a substrate material in any conventional way. It can be by hand with a knife edge or by machine, to form a thin 0.001 cm to 0.1 cm thick film, or by dipping the substrate into the coating. Loading of coating on the substrate can be between about 2 g/m² and 250 g/m², preferably 5-125 g/m², depending on the degree of flexibility desired and protection sought. Usually another substrate layer is applied to the other side by pressing the coating between the two substrates. The coating is cured by placing the coated material in an oven at about 110 degrees C-160 degrees C for about 60 seconds. At higher temperatures, the coating may decompose (column 4, lines 7-25). Thus, Wu teaches a textile article which is at least partially coated with a fluoracrylate coating which may be cured; the article is water vapor permeable and is used to formulate garments, tents, sleeping bag or the like, which the Examiner believes to be that equivalent to what is claimed in claims 5-7. Wu, however does not explicitly teach the water contact angle higher than about 120 degrees.

With regard to the limitation of water contact angle, the Examiner takes of-given that Wu meets each and every chemical and structural requirement set forth in the claims, then it must meet the property limitations of having a water contact angle higher than 120 degrees, recited that depend from said requirements. In other words, it is reasonable to presume that the invention of Wu would inherently anticipate the physical properties of the present invention; since both inventions are comprised of a textile article coated with a fluoroacrylate polymer which has been cured. Furthermore, as no other structural or chemical features are claimed which may distinguish the present invention from that of the Wu's invention, the presently claimed physical properties a higher water contact angle, are deemed to be inherent to the invention of Wu. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald* 205 USPQ 495. In addition, the presently claimed property water contact

Art Unit: 1771

angle would obviously have been present once the Wu composite was provided. Note In re Best, 195 USPQ 433, footnote 4 (CCPA 1977).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 8:00am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



ars
08/25/03

Ms. Arti Singh
Patent Examiner
Art Unit 1771